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Mitchell Clout and Koil Content Creation Pty Ltd.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

THAT ONE VIDEO ENTERTAINMENT, LLC, a California limited liability company)	Case No.: 2:23-CV-02687 SVW (JCx)
)	DECLARATION OF MITCHELL CLOUT IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
Plaintiff)	
vs.)	
KOIL CONTENT CREATION PTY LTD., an Australian proprietary limited company doing business as NOPIXEL; MITCHELLE CLOUT, an individual; and DOES 1-25, inclusive,)	[Assigned to the Hon. Stephen V. Wilson; Ctrm 10A]
Defendant(s).)	

DECLARATION OF MITCHELL CLOUT

1. I, Mitchell Clout, am a citizen of Australia, over the age of eighteen, and have personal knowledge of the facts stated herein, unless stated on information and belief, and if called upon to testify to those facts I could and would competently do so as set forth herein.

2. I am the sole owner and Director of Koil Content Creation Pty Ltd (Koil") now known as NoPixel Studios Pty Ltd, which is a community of content related servers known as NoPixel, and which is a collection of multiplayer content related

1 servers that allow both members of the private community to play on their private
2 servers, and also offers a variety of other public servers to the public audience.

3 3. The NoPixel Server allows individuals to play a modified version of the
4 “open world” videogame “Grand Theft Auto V” in a closed environment. While
5 players can make certain changes to the game’s aesthetics, there is still a difference
6 between “player” changes and “developer” changes, e.g., creating new 3D models or
7 other structural modifications to the game.

8 4. I formed Koil in 2016. When it first started, I was the only developer.
9 After about 18 months, other developers began asking to help develop new mod servers
10 and I let them do so. From its inception, Koil was using the XenForo software to run
11 the NoPixel forum.

12 5. In April 2020, Danny Tracey acquired an account on the NoPixel server.
13 He joined as an unpaid volunteer.

14 6. At this time, Mr. Tracey, like all others before and after him, were required
15 to agree to the community's “terms and rules” (“Terms of Service” or “Terms”). A true
16 and correct copy of the Terms are attached hereto as Exhibit “1.”

17 7. The Terms expressly stated that (1) content providers are granting Koil a
18 “non-exclusive, permanent, irrevocable, unlimited license to use, publish, or re-
19 publish” the “Content” provided; (2) the content provider would retain copyright
20 ownership of all such Content; and (3) “Content” is defined as “All content you submit,
21 upload, or otherwise make available to the Service.”

22 8. The Terms of Service further states that Koil may “remove or modify any
23 Content submitted at any time, with or without cause, with or without notice; and that
24 Koil may terminate “access to all or any part of the Service at any time, with or without
25 cause, with or without notice.

26 9. Mr. Tracey agreed to the terms of service at the time he joined. Attached
27 hereto as Exhibit “2” is a true and correct copy of the record showing Mr. Tracey
28 agreement to the terms and conditions. I obtained this document by going to the

1 administration page for the XenForo forum which lets me see the status of all persons
2 who have an account on the NoPixel Server.

3 10. At some point, Tracey applied to become a developer for the server. At no
4 time did Koil or NoPixel, or the Terms, ever make any distinction as to players or
5 developers. They applied to all content uploaded or submitted by those providing said
6 content, regardless of whether they were “developers”, “players” or otherwise. At no
7 time was there ever a “separate” or “more formal” process by which developers were
8 subject to any other terms. These are the terms that I intended all persons who signed
9 up to provide content to the NoPixel server to abide by and they remained in place
10 throughout Tracey’s entire tenure as a content provider.

11 11. Regarding those contributions, it is my understanding, based on my
12 review of the Complaint, that either TOVE or Mr. Tracey are claiming that the code
13 that Mr. Tracey wrote for the NoPixel server is a “joint work” as that term has been
14 explained to me under United States Copyright laws and that either Mr. Tracey or
15 TOVE is a “joint author” of the code. This is untrue. I have never intended that Mr.
16 Tracey or TOVE to be a “joint author” of the NoPixel code. That is why the terms of
17 service expressly state that all the contributors continue to fully own the code that they
18 submit, they are just providing Koil with a license to use the code. I have never told
19 Mr. Tracey or TOVE that I considered them to be joint authors, and prior to this lawsuit,
20 Mr. Tracey never told me that he considered himself or TOVE to be a joint author. Had
21 he ever said anything like that to me, I would have immediately told him that was not
22 the case so that there would be no confusion.

23 12. In fact, I have never had any agreement whatsoever with TOVE. Nor have
24 I had any communication with TOVE, whether orally or in writing; and I was unaware
25 of their existence or alleged involvement/ownership in any content until this lawsuit.
26 The only agreement I had with Mr. Tracey in connection with ownership or licensing
27 of the content is contained within the Terms.
28

1 13. In that regard, the contributions made by Mr. Tracey were part of a much
2 larger community of work contributed by over a hundred other developers. In other
3 words, Mr. Tracey was only one of many developers that contributed work to the
4 NoPixel servers, with all said work incorporated into the work with the content
5 provided by all developers.

6 14. Further, because there were contributions from dozens of developers, I
7 and Koil were responsible for overseeing and coordinating the work and content
8 submissions. In fact, Mr. Tracey's contributions to the overall work contained on the
9 servers was less than one percent of the total code.

10 15. I am the sole owner of Koil, and I have always been and continue to be
11 the person who is responsible for what is put on the NoPixel server. It was I and Koil,
12 and not Mr. Tracey, that supervises and controls the work, its use and exploitation on
13 the servers. I have the final say on everything that is added to the server.

14 16. Contrary to TOVE's claims, Mr. Tracey was not the "lead developer" of
15 NoPixel, nor was he solely responsible for managing the work of NoPixel developers,
16 technical operations or infrastructure development. He did deploy code, fix bugs,
17 and assist in ensuring the server ran properly while having seniority in some areas,
18 though, no more than our other numerous senior developers.

19 17. And Mr. Tracey was certainly not, at any time or in any way, the "primary
20 contributor to the back-end source code of the NoPixel Server." His work was a small
21 percentage of the overall work performed by many, many, other developers and it was
22 always under my management and control.

23 18. During the period that Mr. Tracey was working for Koil, there were
24 approximately 10 other salaried developers working for Koil on the NoPixel server.

25 19. Neither TOVE nor Mr. Tracey was ever credited as a co-author of the
26 server, nor were any of the other developers. The credited owner of the NoPixel server
27 is Koil.
28

1 20. I have also been made aware that Mr. Tracey and TOVE claim the nature
2 of their claimed work was to build the payment processing system. Nothing could be
3 further from the truth. In fact, at all times, even before Mr. Tracey began making these
4 alleged contributions, Koil utilized the third-party platform provider Tebex to process
5 payments. The only work Tracey performed, therefore, was limited to creating some
6 additional code to facilitate interaction with the Tebex payment platform.

7 21. And the agreement Koil had for that work was never with TOVE. At no
8 time, ever, did I enter into any agreement for TOVE to “loan out” the services of Mr.
9 Tracey to Koil. At no time was I ever informed by Mr. Tracey or TOVE or anyone else
10 that he was performing said work for TOVE or on TOVE’s behalf. The first I heard of
11 this was when the claims in this case were made. Neither did I ever enter into a contract to
12 pay TOVE 50% of NoPixel’s revenue. I have never spoken with or had any agreements
13 with TOVE either individually or on behalf of Koil.

14 22. Further to the foregoing, the only arrangement Koil had was with Mr.
15 Tracey, and Mr. Tracey alone. In fact, for these services Koil agreed to compensate
16 Mr. Tracey, and only Mr. Tracey, \$10,000 per month, and I paid him directly. At no
17 point did Koil ever pay TOVE or was I aware of their existence, save for two invoices
18 that Mr. Tracey submitted for payment that had TOVE’s email on it. Still, Mr. Tracey
19 immediately informed me those invoices, which I paid, were submitted in error; after
20 which the payments were reversed, new invoices submitted and were paid. All such
21 payments, without exception, were made to Mr. Tracey’s personal PayPal account
22 (D@nny.co).

23 23. The foregoing payments began in May 2021, when we started paying Mr.
24 Tracey directly (via deposits to his personal PayPal account) totalling approximately
25 \$10,000.00 per month. At no point did Mr. Tracey or TOVE ever inform me that Mr.
26 Tracey began working for TOVE and that payments should be made to TOVE, rather
27 than Mr. Tracey.
28

24. But to be clear, Koil's agreement to start paying Mr. Tracey was not due to the alleged "commercial success" of Mr. Tracey's contributions. Rather, it was to fairly compensate Mr. Tracey for his work. Period. In fact, the commercial success of the NoPixel servers was because of the game itself and the people (including many very famous streamers) who used NoPixel and the playable modification made by the dozens of contributors, and not because Mr. Tracey made a small contribution toward facilitating the payment processing. The working relationship with Mr. Tracey did not change.

25. Significantly, at no time did I or Koil ever agree to “make Mr. Tracey a 50% partner in the NoPixel Server.” In fact, that is demonstrably false. What we did agree to was to give Mr. Tracey a revenue share on just four of the many NoPixel Servers. Namely, the priority queue sales of the White Priority Server, the India Server, the Spain Server and the South America Server only while he was working for NoPixel and delivering the promised products, helping the infra team and also developing 4 mods monthly, one including Red Dead Redemption which he never completed.. That was it. And, while this agreement was in writing on Discord, there is no written or oral agreement with anyone, at any time, that Koil would pay Tracey (or TOVE) on 50% of all servers or otherwise make him a “partner.”

26. Tracey otherwise continued to perform services on the NoPixel server until he was terminated in December 2022.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 22nd day of September 2024 in Australia

By: Mitchell Clout

EXHIBIT 1



Register

Welcome Guest, to NoPixel's Website.

GTA Standard Whitelisting is currently: **Closed!**

GTA Donator Whitelisting is currently: **Open! (Roughly 14-30 Days)**

Please pay attention to the forums and instructions given, donators still must apply like normal, they are just processed faster. If you do pass the application process, it may still take considerable time to join the server.

The process can be found here: <https://www.nopixel.net/upload/index.php?threads/civilian-application-template.116232/>

Home > **Help** >

Terms and rules

Help

Smilies

BB codes

Trophies

Cookie usage

Terms and rules

Privacy Policy

The providers ("we", "us", "our") of the service provided by this web site ("Service") are not responsible for any user-generated content and accounts. Content submitted express the views of their author only.

This Service is only available to users who are at least 18 years old. If you are younger than this, please do not register for this Service. If you register for this Service, you represent that you are this age or older.

All content you submit, upload, or otherwise make available to the Service ("Content") may be reviewed by staff members. All Content you submit or upload may be sent to third-party verification services (including, but not limited to, spam prevention services). Do not submit any Content that you consider to be private or confidential.

You agree to not use the Service to submit or link to any Content which is defamatory, abusive, hateful, threatening, spam or spam-like, likely to offend, contains adult or objectionable content, contains personal information of others, risks copyright infringement, encourages unlawful activity, or otherwise violates any laws. You are entirely responsible for the content of, and any harm resulting from, that Content or your conduct.

We may remove or modify any Content submitted at any time, with or without cause, with or without notice. Requests for Content to be removed or modified will be undertaken only at our discretion. We may terminate your access to all or any part of the Service at any time, with or without cause, with or without notice.

You are granting us with a non-exclusive, permanent, irrevocable, unlimited license to use, publish, or re-publish your Content in connection with the Service. You retain copyright over the Content.

These terms may be changed at any time without notice.

If you do not agree with these terms, please do not register or use the Service. Use of the Service constitutes acceptance of these terms. If you wish to close your account, please contact us.

Home > **Help** >

EXHIBIT 2



Dw

Apr 22, 2020

Field name:

Accepted terms and rules

Old value:

New value:

Apr 22, 2020 at 4:43 PM

Field name:

Accepted privacy policy

Old value:

New value:

Apr 22, 2020 at 4:43 PM

Log out v2.1.7